

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI‘I

TA CHEY,

Plaintiff,

vs.

YHB HOSPITALITY GROUP, INC.,
HAWAII KAI GOLF COURSE, *et al.*,

Defendants.

Case No. 22-cv-00204-DKW-WRP

**ORDER (1) DISMISSING
COMPLAINT WITH LEAVE TO
AMEND, AND (2) DENYING
MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

On May 3, 2022, Plaintiff TA Chey (Chey or Plaintiff), an alleged resident of Hawai‘i, filed a Complaint against, among others, YHB Hospitality Group, Inc. (YHB) and Hawai‘i Kai Golf Course (HKGC). Although Chey’s claims are varied and numerous, they essentially concern alleged “noise pollution” from the operation of “loud” lawn mowers and other equipment at roughly 6:00 a.m. emanating from the golf course. Dkt. No. 1. At the same time, Plaintiff also filed a “Motion for TRO/Preliminary Injunction” (TRO Motion). Dkt. No. 2. In the TRO Motion, Plaintiff seeks an order enjoining Defendants from using the aforementioned equipment at HKGC until after 8:00 a.m.

At this early juncture, there is at least one glaring problem with the Complaint—Plaintiff alleges that this Court has subject matter jurisdiction over this case solely on the basis of diversity pursuant to 28 U.S.C. Section 1332. Chey

alleges in support of this assertion that he “is a resident of the state of Hawaii” and “one of the Defendants is a California Corporation.” Dkt. No. 1 at ¶ 2 (emphasis added). However, it is hornbook law that diversity, for federal jurisdictional purposes, means *complete* diversity, which, in turn, means every plaintiff must be diverse from every defendant.¹ This is something Plaintiff cannot establish, given that the Complaint acknowledges that Plaintiff and at least one of the Defendants (HKGC) are both Hawai‘i residents. As a result, the Court DISMISSES the Complaint for lack of subject matter jurisdiction. Dismissal is, however, without prejudice in order to afford Plaintiff with an opportunity to correct any errors in his jurisdictionally-related facts or to allege a jurisdictional basis for this case other than diversity. Because the Complaint has been dismissed, the TRO Motion is DENIED AS MOOT.

LEGAL STANDARD

“A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008).²

¹While Plaintiff is proceeding pro se in this action, he asserts that he is a member of the California Bar. Dkt. No. 1 at 1.

²The standards for a temporary restraining order and a preliminary injunction are substantially the

Before issuing any injunction, particularly *ex parte*, it is axiomatic that this Court must satisfy itself that subject matter jurisdiction exists. *See Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006) (explaining that subject matter jurisdiction “involves a court’s power to hear a case” and a court has an independent obligation to determine whether such jurisdiction exists) (quotation and citation omitted); *Church of Scientology of Cal. v. United States*, 920 F.2d 1481, 1490-91 (9th Cir. 1990) (affirming a district court’s decision to dissolve a temporary restraining order when the court lacked subject matter jurisdiction); *Zepeda v. U.S. Immigration & Naturalization Serv.*, 753 F.2d 719, 727 (9th Cir. 1983) (“A federal court may issue an injunction if it has personal jurisdiction over the parties and subject matter jurisdiction over the claim....”); *Wielgos v. Idaho Bd. of Land Comm’rs*, 2016 WL 3640609, at *3 (D. Idaho June 29, 2016) (“Clearly, a district court may not grant a preliminary injunction if it lacks subject matter jurisdiction over the case before it.”).

Here, Plaintiff alleges that the Court has subject matter jurisdiction on the basis of diversity.³ A federal district court possesses diversity jurisdiction over actions between parties of diverse citizenship which exceed \$75,000 in controversy. *Arbaugh*, 546 U.S. at 513. Diverse citizenship means complete diversity. In other

same. *Stuhlberg Int’l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001), *overruled on other grounds by Winter*, 555 U.S. at 20.

³Plaintiff also asserts that subject matter jurisdiction exists under 28 U.S.C. Section 1391(b)(2) because a substantial part of the events of this case occurred within Hawai‘i. Dkt. No. 1 at ¶ 1. Section 1391, however, is a *venue* provision—it has nothing to do with subject matter jurisdiction. *See Eldee-K Rental Properties, LLC v. DIRECTV, Inc.*, 748 F.3d 943, 949 (9th Cir. 2014) (“Venue and subject matter jurisdiction are distinct concepts....”).

words, “where the citizenship of each plaintiff is different from that of each defendant.” *Hunter v. Philip Morris USA*, 582 F.3d 1039, 1043 (9th Cir. 2009).

DISCUSSION

In the Complaint, Plaintiff does not even attempt to allege that complete diversity exists in this case. Instead, he tacitly acknowledges it does not by alleging that while he is a resident of Hawaii, only “one of the Defendants is a California Corporation.” Dkt. No. 1 at ¶ 2.⁴ As mentioned, the fact that one of the Defendants may be of diverse citizenship is of little significance given that *all* of the defendants must be diverse. In other words, because Plaintiff alleges that he is a resident and presumably a citizen of Hawai‘i, *all* of the Defendants must be from States *other than* Hawai‘i. Plaintiff cannot allege this, given that one of the Defendants is a golf course located in Hawai‘i and therefore presumably a citizen of Hawai‘i. The Complaint must thus be DISMISSED.

Nonetheless, because Plaintiff is proceeding pro se and to allow him a further opportunity to allege subject matter jurisdiction, dismissal is WITHOUT PREJUDICE and with leave to amend. Specifically, in any amended complaint Plaintiff may file, he must clearly allege a basis for subject matter jurisdiction *other than diversity* or allege facts on which the above principles of diversity have been satisfied. **Plaintiff may have until May 18, 2022 to file an amended complaint**

⁴It appears that Defendant YHB is the “California Corporation” to which Plaintiff refers. See Dkt. No. 1 at ¶ 13.

that complies with the instructions herein. Should Plaintiff fail to do so, he is forewarned that this case will be dismissed for lack of subject matter jurisdiction.

CONCLUSION


For the reasons set forth herein, the Complaint is DISMISSED. Because the Complaint has been dismissed, the TRO Motion, Dkt. No. 2, is DENIED AS MOOT.

Plaintiff may have until May 18, 2022 to file an amended complaint, if any.

IT IS SO ORDERED.

Dated: May 4, 2022 at Honolulu, Hawai'i.




Derrick K. Watson
United States District Judge